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14 *Attorneys for Defendant eBay Inc.*

15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA
17

18 TRADEBAY LLC, a Nevada limited liability
19 company,

20 Plaintiff,

21 vs.

22 EBAY INC., a Delaware corporation, et al.,

23 Defendants.
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CASE NO. 2:11-cv-00702-ECR-PAL

**DEFENDANT EBAY INC.'S REQUEST
FOR JUDICIAL NOTICE IN SUPPORT
OF EBAY'S MOTION TO DISMISS
PLAINTIFF TRADEBAY LLC'S
AMENDED COMPLAINT**

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to Federal Rule of Evidence 201, defendant eBay
3 Inc. respectfully requests that the Court take judicial notice of the following records of the United
4 States Patent and Trademark Office (“USPTO”):

5 1. Trademark application for the trademark TRADEBAY filed January 6, 2009,
6 issued Serial No. 77643875, which is publicly available from the Trademark Document Retrieval
7 system on the USPTO Web site (*available at*
8 [http://tdr.uspto.gov/jsp/DocumentViewPage.jsp?77643875/APP20090109064014/Application/2/0](http://tdr.uspto.gov/jsp/DocumentViewPage.jsp?77643875/APP20090109064014/Application/2/06-Jan-2009/sn/false#p=1)
9 [6-Jan-2009/sn/false#p=1](http://tdr.uspto.gov/jsp/DocumentViewPage.jsp?77643875/APP20090109064014/Application/2/06-Jan-2009/sn/false#p=1)), and a printout of which is attached hereto as Exhibit A, as printed on
10 June 27, 2011.

11 2. United States Patent and Trademark Office Trademark Applications and
12 Registrations Retrieval Web site for status of Trademark Application Serial No. 77643875, which
13 is publically available on the Trademark Applications and Registrations Retrieval system on the
14 USPTO Web site (*available at*
15 <http://tarr.uspto.gov/tarr?regser=serial&entry=77643875&action=Request+Status>), and a printout
16 of which is attached hereto as Exhibit B, as printed on June 27, 2011.

17 This request is made pursuant to Federal Rule of Evidence 201, on the grounds that the
18 Court may take judicial notice of any document “capable of accurate and ready determination by
19 resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). When
20 supplied with the necessary information to demonstrate accuracy, judicial notice is mandatory.
21 Fed. R. Evid. 201(d).

22 A federal court may take judicial notice of information in public records, including
23 USPTO records, and the USPTO Web site. See Reyn’s Pasta Bella, LLC v. Visa USA, Inc., 442
24 F.3d 741, 746 n.6 (9th Cir. 2006) (“We may take judicial notice of court filings and other matters
25 of public record.”); United States v. Ritchie, 342 F.3d 903, 909 (9th Cir. 2003) (courts may take
26 judicial notice of public records, including those of administrative bodies); Vitek Sys., Inc. v.
27 Abbott Labs., 675 F.2d 190, 192 n.4 (8th Cir. 1982) (noting with respect to trademark registrations
28 that a court “may take judicial notice of Patent and Trademark Office documents”); Denius v.

1 Dunlap, 330 F.3d 919, 926 (7th Cir. 2003) (taking judicial notice of information on official
 2 government Web site pursuant to Rule 201); Safeworks, LLC v. Spydercrane, LLC, 2009 WL
 3 4730821, at *4 n.1 (W.D. Wash. Dec. 7, 2009) ("The Court may take judicial notice of the online
 4 records maintained by the USPTO."); Pollution Denim & Co. v. Pollution Clothing Co., 547 F.
 5 Supp. 2d 1132, 1137 n.19 (C.D. Cal. 2007) (taking judicial notice from the USPTO Web site of
 6 the date of a trademark application, that it was filed on an intent to use basis, and the date
 7 registrant first used the mark in commerce: "The court takes judicial notice of these facts from
 8 online records maintained by the United States Patent and Trademark Office."); Icon Enters. Int'l.
 9 Inc. v. Am. Prods. Co., 2004 WL 5644805, at *1 (C.D. Cal. Oct. 7, 2004) (taking judicial notice of
 10 trademark application filed with the USPTO).

11 Further, on a motion to dismiss, the Court may consider matters subject to judicial notice.
 12 See, e.g., Dreiling v. Am. Exp. Co., 458 F.3d 942, 946 n.2 (9th. Cir. 2006) (on motion to dismiss,
 13 the court "may consider documents referred to in the complaint or any matter subject to judicial
 14 notice"); Ritchie, 342 F.3d at 908 ("A court may [] consider certain materials-documents attached
 15 to the complaint, documents incorporated by reference in the complaint, or matters of judicial
 16 notice-without converting the motion to dismiss into a motion for summary judgment."); World
 17 Market Center Venture, LLC v. Tex. Int'l Prop. Assocs., 2009 WL 3303758, at *2 (D. Nev. Oct.
 18 14, 2009) ("judicial notice of 'matters of public record'" is an exception to the prohibition against
 19 consider material beyond the pleadings in ruling on a Rule 12(b)(6) motion); Shuffle Master, Inc.
 20 v. Smart Shoes, Inc., 2009 WL 3336115, at *3 (D. Nev. Oct. 14, 2009) (same).

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1 Here, the accuracy of the records of the USPTO concerning the application for the
2 trademark TRADEBAY with Serial No. 77643875 and the status of that application cannot
3 reasonably be questioned, as they are publicly available on the official USPTO Web site.
4 Defendant eBay Inc. therefore requests that the Court take judicial notice of the records identified
5 above.

6 RESPECTFULLY SUBMITTED this 28th day of June, 2011.

7
8 By: /s/ Scott B. Kidman

9 SCOTT B. KIDMAN

BRIAN M. WHEELER

10 *Applications Pro Hac Vice Being Sought*

QUINN EMANUEL URQUHART & SULLIVAN, LLP

11 865 S. Figueroa Street, 10th Floor

12 Los Angeles, CA 90017

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14 By: /s/ Pat Lundvall

15 PAT LUNDVALL

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17 2300 West Sahara Avenue

Suite 1000

18 Las Vegas, NV 89102

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20 *Attorneys for Defendant eBay Inc.*

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of McDonald Carano Wilson LLP and on the 28th day of June, 2011, I electronically filed the forgoing DEFENDANT EBAY INC.'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF EBAY'S MOTION TO DISMISS PLAINTIFF TRADEBAY LLC'S AMENDED COMPLAINT with the Clerk of the Court using the ECF System, which will cause a copy of the foregoing to be delivered by the U.S. District Court CM/ECF to the following:

Corey M. Eschweiler
Adam D. Smith
4795 South Durango Drive
Las Vegas, NV 89147

/s/ Arlene P. Hallmark
An employee of McDonald Carano Wilson LLP

Exhibit A

PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register**Serial Number: 77643875****Filing Date: 01/06/2009****The table below presents the data as entered.**

Input Field	Entered
SERIAL NUMBER	77643875
MARK INFORMATION	
*MARK	TRADEBAY
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	TRADEBAY
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Tradebay, Inc.
*STREET	24123 Peachland Blvd C-4 #458
*CITY	Port Charlotte
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	33954
PHONE	239-262-1001
FAX	239-261-0057
EMAIL ADDRESS	usptomail@whitelawfirm.com
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Florida

GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	035
*IDENTIFICATION	Online e-commerce services, internet web sites; online marketplace for goods and or services, providing services and goods to others via a global computer information network
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	Jennifer L. Whitelaw
FIRM NAME	WHITELAW LEGAL GROUP
STREET	3838 Tamiami Trail North, Suite 310
CITY	Naples
STATE	Florida
COUNTRY	United States
ZIP/POSTAL CODE	34103
PHONE	239-262-1001
FAX	239-261-0057
EMAIL ADDRESS	usptomail@whitelawfirm.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Kathleen L. Kolacz
CORRESPONDENCE INFORMATION	
NAME	Jennifer L. Whitelaw
FIRM NAME	WHITELAW LEGAL GROUP
STREET	3838 Tamiami Trail North, Suite 310
CITY	Naples
STATE	Florida
COUNTRY	United States
ZIP/POSTAL CODE	34103
PHONE	239-262-1001
FAX	239-261-0057
EMAIL ADDRESS	usptomail@whitelawfirm.com

AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	NOT PROVIDED
SIGNATORY'S NAME	NOT PROVIDED
SIGNATORY'S POSITION	NOT PROVIDED
DATE SIGNED	NOT PROVIDED

Trademark/Service Mark Application, Principal Register

Serial Number: 77643875

Filing Date: 01/06/2009

To the Commissioner for Trademarks:

MARK: TRADEBAY (Standard Characters, see [mark](#))

The literal element of the mark consists of TRADEBAY.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Tradebay, Inc., a corporation of Florida, having an address of

24123 Peachland Blvd C-4 #458

Port Charlotte, Florida 33954

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 035: Online e-commerce services, internet web sites; online marketplace for goods and or services, providing services and goods to others via a global computer information network
Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant hereby appoints Jennifer L. Whitelaw and Kathleen L. Kolacz of WHITELAW LEGAL GROUP

3838 Tamiami Trail North, Suite 310

Naples, Florida 34103

United States

to submit this application on behalf of the applicant.

Correspondence Information: Jennifer L. Whitelaw

3838 Tamiami Trail North, Suite 310

Naples, Florida 34103

239-262-1001(phone)

239-261-0057(fax)

usptomail@whitelawfirm.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

RAM Sale Number: 6869

RAM Accounting Date: 01/06/2009

Serial Number: 77643875

Internet Transmission Date: Tue Jan 06 12:26:38 EST 2009

TEAS Stamp: USPTO/BAS-76.101.213.80-2009010612263823

9474-77643875-400318e9846f04d5886243d970

7df48690-CC-6869-20090106121733814520

TRADEBAY

Exhibit B

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2011-06-27 17:07:09 ET

Serial Number: 77643875 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

TRADEBAY

(words only): TRADEBAY

Standard Character claim: Yes

Current Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVUE on the Trademark Trial and Appeal Board web page.

Date of Status: 2010-04-01

Filing Date: 2009-01-06

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 116

Attorney Assigned:
SNAPP TINA LOUISE

Current Location: 650 -Publication And Issue Section

Date In Location: 2010-01-28

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Tradebay, Inc.](#)

Address:
[Tradebay, Inc.](#)

24123 Peachland Blvd C-4 #458

Port Charlotte, FL 33954

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Florida

Phone Number: 239-262-1001

Fax Number: 239-261-0057

GOODS AND/OR SERVICES

International Class: 035

Class Status: Active

Computerized online ordering featuring general merchandise and general consumer goods; providing an Internet website portal featuring links to the merchandise and services of others for retail and bartering purposes; operating online marketplaces for sellers and buyers of goods and/or services; promoting the goods and services of others via a global computer information network; exchange services, namely, bartering of goods and services for others

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-04-01 - Opposition instituted for Proceeding

2010-04-01 - Opposition papers filed

2010-03-02 - Notice Of Publication E-Mailed

2010-03-02 - Published for opposition

2010-01-28 - Law Office Publication Review Completed

2010-01-27 - Approved For Pub - Principal Register

2010-01-05 - Teas/Email Correspondence Entered

2010-01-05 - Communication received from applicant

2010-01-05 - TEAS Request For Reconsideration Received

2009-12-30 - Notification Of Final Refusal Emailed

2009-12-30 - Final refusal e-mailed

2009-12-30 - Final Refusal Written

2009-12-11 - LIE Checked Susp - To Atty For Action

2009-12-11 - Assigned To LIE

2009-06-11 - Notification Of Letter Of Suspension E-Mailed

2009-06-11 - LETTER OF SUSPENSION E-MAILED

2009-06-11 - Suspension Letter Written

2009-05-14 - Teas/Email Correspondence Entered

2009-05-14 - Communication received from applicant

2009-05-14 - TEAS Response to Office Action Received

2009-03-28 - Notification Of Non-Final Action E-Mailed

2009-03-28 - Non-final action e-mailed

2009-03-28 - Non-Final Action Written

2009-03-22 - Assigned To Examiner

2009-01-10 - Notice Of Pseudo Mark Mailed

2009-01-09 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Jennifer L. Whitelaw

Correspondent

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3838 TAMiami TRIAL NORTH SUITE 310
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